

Idaho Public Utilities Commission

Case No. IPC-E-12-25 and IPC-E-12-26

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Motion by anaerobic digester projects denied

The Idaho Public Utilities Commission is denying a motion by the developer of two Magic Valley anaerobic digester power projects to dismiss a complaint filed against the projects by Idaho Power Company.

Idaho Power claimed the projects failed to meet their scheduled operation dates and wants to terminate the sales agreements. The developer of the projects, formerly New Energy and now Exergy Development Group of Idaho, claims the projects were delayed by “force majeure” or events beyond their control. The developer claims the force majeure was a case before the commission regarding renewable projects that fall under the Public Utility Regulatory Policies Act or PURPA. Both anaerobic digester projects are PURPA projects. That case caused uncertainty among lenders making it impossible to get financing for the projects, Exergy claimed. Further, Exergy claimed contract disputes should be settled in the courts and not by the commission.

The commission said that while generally contract rights are a matter under courts’ jurisdiction, the issues in this case are related to commission proceedings. The commission also pointed out that the Power Purchase Agreements, signed by all the parties, state that all disputes “related to or arising under this agreement” will be submitted to the commission for resolution. Further, past Supreme Court decisions give the commission jurisdiction to hear complaints against public utilities, especially as they pertain to the determination of rates paid by customers. “The Power Purchase Agreements at issue in this case directly affect Idaho Power’s rates ...” the commission stated.

The commission denied the projects’ motion to dismiss Idaho Power’s complaint and gave the projects to March 19 to respond to the complaint.

In 2010, the commission approved 15-year sales agreements between Idaho Power and the Swager Farms Dairy project near Buhl and the Double B Dairy project near Murtaugh. Both were 1.2-megawatt projects at the time. The Swager Farms project was to have been online by Oct. 1, 2012, and the Double B project by Dec. 1, 2012.

Between the projects’ approval and the complaint case filed by Idaho Power, the utility and the projects engaged in ongoing discussions over the agreements that would connect the projects to Idaho Power’s transmission grid, called a Generator Interconnection Agreement (GIA).

In January 2011, the developer asked that the capacity for each of the projects be increased from 1.2 MW to 2 MW.

In April 2011, Idaho Power said constructing the transmission interconnection for Swager Farms would cost about \$1.71 million and Double B, about \$376,000.

On May 9, 2012 and again on June 19, Idaho Power sent Double B a GIA, the latter stating that no response from the developer by July 20 would result in the application being withdrawn and the project removed from Idaho Power's interconnection queue. Idaho Power claimed the GIA was not returned and refunded the developer the interconnection deposit.

On March 22, 2012, Idaho Power sent a draft GIA to Swager Farms. In April, Swager Farms asked that the GIA be amended to accommodate a lower capacity of 0.8 MW, reducing the estimated interconnection cost to \$225,000. On Sept. 14, Idaho Power sent the final GIA to Swager Farms, stating that a signed GIA and funding must be received by no later than Oct. 1. Idaho Power alleges Swager Farms did not sign the GIA or pay for the interconnection.

On Sept. 28, Swager Farms and Double B filed a joint petition stating they could not get financing for the projects because of the uncertainty created by a separate case before the PUC. The projects claimed that the issues of green tag ownership and possible curtailment of the projects' output by Idaho Power during light load hours led to the uncertainty among lenders. (The issues in that case were resolved in December 2012, with the revenue created by green tags or Renewable Energy Certificate (REC) ownership for anaerobic digesters assigned to the developer and curtailment by Idaho Power during light load hours denied.)

To read documents related to this case go to www.puc.idaho.gov and click on the electric icon, then on "Open Electric Cases," and scroll down to Case No. IPC-E-12-25 or IPC-E-12-26.

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